

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ISRAEL CRESPO,)
Petitioner)
)
)
v.) C.A. 07-30092-MAP
)
)
GARY RODEN,)
Respondent)

MEMORANDUM AND ORDER RE:
PETITIONER'S MOTION FOR CERTIFICATE
OF APPEALABILITY
(Dkt. No. 19)

January 3, 2008

PONSOR, D.J.

This petition pursuant to 28 U.S.C. § 2254 was filed on May 21, 2007. Respondent filed a motion to dismiss the petition on August 13, 2007, pointing out that Petitioner had failed to exhaust his available state court remedies. No opposition was ever filed to the Motion to Dismiss, and Respondent's argument that Petitioner had indeed failed to exhaust his state court remedies appeared to be supported on the record.

In light of the meritoriousness of Respondent's arguments and the failure of Petitioner to comply with the Local Rules in filing his opposition, the court on October 15, 2007 issued its Memorandum and Order allowing the Motion to Dismiss. On October 29, 2007, Petitioner filed his Notice of Appeal, and on December 19, 2007, he filed the motion currently before the court seeking a Certificate of Appealability.

Given the uncontested fact that Petitioner has failed to exhaust his administrative remedies, and his violation of the Local Rules by failing to oppose the Motion to Dismiss, the court has no alternative but to deny the Motion for Certificate of Appealability. There simply has been no substantial showing of any denial of a constitutional right. Petitioner has not raised issues which are debatable among jurists of reason in the sense that some other court could resolve the issue in a manner different than this court did on October 15, 2007. Unfortunately for Petitioner, his petition simply does not raise questions which deserve encouragement to proceed further on appeal.

Accordingly, the Motion for Certificate of Appealability (Dkt. No. 19) is hereby DENIED. This case may now be closed.

It is So Ordered.

/s/ Michael A. Ponsor
MICHAEL A. PONSOR
United States District Judge